IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3915 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARIBHAI RAIJIBHAI DESAI

Versus

STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioner

MR ST MEHTA, Ld. APP for Respondents No.1 & 2.

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 22/09/2000

ORAL JUDGEMENT

This application is filed under Section 482 of the Code of Criminal Procedure, 1973 (In short `Cr.P.C.') by a person whose name is shown as accused in F.I.R. bearing C.R.No.II 186/94 dated 1st August, 1994, filed in

Gorwa Police Station, Baroda, with a request to this Court to quash the proceedings initiated against him vide aforesaid CR.No.II 186/94 on the ground that offences stated in the complaint are non-cognizable offences and for that non-cognizable offences no FIR can be lodged taking cognizance by the Police.

2. Heard Mr.B.S.Patel, learned advocate for the petitioner and Mr.S.T.Mehta, learned APP for the respondents.

3. At the outset, Shri S.T.Mehta, learned APP for the opponents has produced certain documents which are certified copies obtained from the lower Court. They are taken on record. On perusal of these documents, it appears that, when this matter was placed before this Court, this Court (Coram: R.A.Mehta,J.) on 14.2.1995 passed following order in the present proceeding.

> "Rule. Miss.Valikarimwala, learned APP waives service for respondent No.1. Direct service for respondent No.2. Ad-interim relief to the effect that the police shall not investigate in the FIR (at Annex-A to the petition) as prima facie, it is shown that the offence is a non-cognizable offence and it would be a N.C.Complaint. However, it is made clear that there is no prohibition by the Court against filing of complaint in the Court."

From papers also, it appears that the Police Inspector who investigated the case, registered on the basis of aforesaid FIR bearing CR.No.II 186/94, ultimately, filed a final report in Trial Court on or about 16th July, 1996 under Section 173 of Cr.P.C. requesting the Court to grant `N.C.' Summary. Thus, in this case, Investigating Officer has treated the complaint ultimately as `NC' complaint and, therefore, at the best, complainant can lodge a private complaint in the Court if he so desires.

4. In view of this, the proceeding initiated against the present petitioner on the basis FIR lodged on 1.8.1994 by complainant Shri A.C.Patel i.e. opponent No.2, requires to be quashed and set aside. Accordingly, it is quashed and set aside.

5. Shri B.S.Patel, learned advocate for the petitioner further submits that liberty be granted to the present petitioner in case of any necessity if complainant files a private complaint in the Court.

Liberty is granted.

6. In view of what is stated hereinabove, this Criminal Misc. Application is allowed. The proceeding initiated against the petitioner on the basis of aforesaid FIR bearing C.R.No.II 186/94 of Gorva Police Station, Baroda is quashed and set aside. Rule is made absolute in terms of aforesaid extent. Ad-interim relief granted on 14th February, 1995, is vacated forthwith.

(H.H. Mehta, J.)

syed/